

STATE OF TENNESSEE

Office of the Attorney General



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T.R.A. DOCKET ROOM

PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P O BOX 20207
NASHVILLE TN 37202

ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
ASSOCIATE CHIEF DEPUTY
ATTORNEY GENERAL

MICHAEL E. MOORE
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491
FACSIMILE 615-741-2009

April 1, 2004

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Docket 03-00633, TENNESSEE COALITION OF RURAL INCUMBENT TELEPHONE COMPANIES AND COOPERATIVES REQUEST FOR SUSPENSION OF WIRELINE TO WIRELESS NUMBER PORTABILITY OBLIGATIONS PURSUANT TO SECTION 251(F)(2) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division of the Office of the Attorney General's Second Complaint and Petition to Intervene. Kindly file the same in this docket. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Timothy C. Phillips" followed by a stylized flourish.

Timothy C. Phillips
Assistant Attorney General
(615)741-8700

cc: All Parties of Record

74181

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
TENNESSEE COALITION OF RURAL)	
INCUMBENT TELEPHONE)	
COMPANIES AND COOPERATIVES)	
REQUEST FOR SUSPENSION OF)	DOCKET NO. 03-00633
WIRELINE TO WIRELESS NUMBER)	
PORTABILITY OBLIGATIONS)	
PURSUANT TO SECTION 251(F)(2) OF)	
THE COMMUNICATIONS ACT OF)	
1934, AS AMENDED)	

SECOND COMPLAINT AND PETITION TO INTERVENE

Comes now Paul G. Summers, the Attorney General for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General (hereinafter "Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118(c)(2)(A), and hereby complains and petitions to intervene in this docket on behalf of the public interest because consumers may be adversely affected by the proposed Amended Petition for Suspension. The proposed Amended Petition for Suspension seeks to indefinitely suspend the obligations of the members of the Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives (hereinafter "Petitioners" or "Independents") under federal law to provide wireline to wireless number portability to their customers. If the Independents' request is granted, their Tennessee customers will not be able to change their wireline telephone numbers to wireless service as envisioned by the Federal Communications Commission ("FCC"). Accordingly, the TRA should deny the request.

For this cause, the Consumer Advocate would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 (c)(2)(A) to initiate a contested case, and participate or intervene in proceedings to represent the interests of Tennessee consumers in accordance with the Uniform Administrative Procedures Act ("UAPA").

2. The Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives in their present Amended Petition for Suspension before the TRA, is represented by R. Dale Grimes, Bass, Berry & Sims PLC, 315 Deaderick Street, Suite 2700, Nashville, Tennessee, 37238-3001.

3. The present docket, Docket No. 03-00633, involves a request by the Independents to suspend their obligation under Section 251(b) of the Federal Communications Act of 1934, as amended, to provide wireline to wireless number portability to their customers. Such number portability means that their customers would be able to take their traditional "wireline" or "landline" telephone number that many people have for the telephones in their homes or businesses and carry that number for use (that is "port" it) for wireless service. Thus, with number portability, a customer going from wireline to wireless service would not have to go through the inconvenience of getting a new number and notifying all of his or her friends or customers of that new number.

4. In their Amended Petition for Suspension, the Independents do not contest the FCC's authority to require wireline to wireless number portability pursuant to Section 251(b) of the Federal Communications Act of 1934, as amended. Instead they request suspension of that obligation for an uncertain time pursuant to Section 251(f) of the Federal Communications Act of 1934, which provides that such suspension or modification may be granted if it:

(A) is necessary

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

- (ii) to avoid imposing a requirement that is unduly economically burdensome; or
 - (iii) to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.

47 U.S.C. § 251(f)(2).¹

5 The Consumer Advocate believes that the Independents have not set forth sufficient evidence to support such a suspension. At this time, the Independents have made only broad statements as to the “burden” of providing number portability. Unless and until a contested case is convened, with the attending rights of discovery and cross-examination, the Independents’ allegations will remain untested. In the Amended Petition the Independents admit to uncertainty with respect to the summary numbers provided thus far. Without more information, the Amended Petition does not support the requisite showing that suspension “is necessary” ... “to avoid a significant adverse economic impact on users of telecommunications services generally” or “to avoid imposing a requirement that is unduly economically burdensome. ..” Under the scheme set out in 47 U.S.C. § 251(f)(2) the burden for providing this information is clearly on the Independents. While there are costs involved in such an endeavor, the costs will be far less than the Independents will incur should their initial estimates be correct.

6. Furthermore, the Independents have failed to show why a suspension for an uncertain period of time is proper. To the extent the Independents are able to demonstrate that the dates set

¹ It should be noted that the criteria set in subparts (i)-(iii) should be read in the disjunctive. Subparts (A) and (B) must be read in the conjunctive. The Consumer Advocate mentions this fact, because at points in the Amended Petition the Independents seem to argue that the TRA may grant the request based on a public interest analysis. Under a proper reading of the plan language the Independents must satisfy one of the criteria in subpart (A) and the public interest requirement in subpart (B) in order to prevail.

forth in "Attachment A" to the Amended Petition are accurate projections for LNP technical capacity, the Consumer Advocate does not object to suspension until these dates for each Independent. However, the alternative dates for implementation by the Independents present a concern. Neither of the secondary options for implementation "six months after the date by which the *Intermodal Orders* are no longer subject to appeal" nor "six months after the date by which the TRA has provided direction to the Petitioners on the rating and routing issues" is derived from the 47 U.S.C. § 251(f)(2). Each option requires the TRA to look beyond the criteria set out in 47 U.S.C. § 251(f)(2) and behind the reasoning of the FCC in imposing an obligation on the Independents to implement LNP. The applicable standard in 47 U.S.C. § 251(f)(2) requires a showing that implementation of LNP is "technically infeasible." Neither uncertainty with respect to the outcome of the appeal of the FCC's decision, nor the requirement that "calls to the ported number will continue to be rated in the same fashion as they were prior to the port" is an technical capacity concern. Requests for suspension with respect to such uncertain time periods should be addressed to the FCC.

7. Accordingly, the Tennessee Regulatory Authority should not approve the proposed Amended Petition for Suspension.

8. Only by intervening and participating in this proceeding can the Consumer Advocate work to protect the public interest.

WHEREFORE, the Consumer Advocate prays that the Authority convene a contested case and grant its Petition to Intervene, and grant such other relief as may be appropriate.

RESPECTFULLY SUBMITTED,

PAUL G. SUMMERS, B.P.R. #6285
Attorney General
State of Tennessee



TIMOTHY C. PHILLIPS, B.P.R. #012751
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-8700

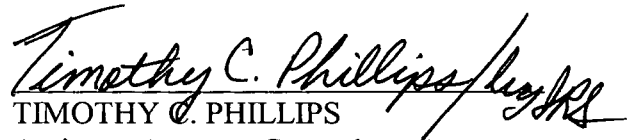
Dated: April 7, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via or facsimile on April 7, 2004, upon:

R. Dale Grimes, Esq.
Bass, Berry & Sims
Amsouth Center
315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238-3001

Richard Collier, Esq.
General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505



TIMOTHY C. PHILLIPS
Assistant Attorney General

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